IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 860 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATBHAI KANTILAL JETHWA - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 & 2
NOTICE SERVED for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 10/03/2006

ORAL JUDGMENT

Rule. Learned Assistant Government Pleader Mr.Siraj Gori waives service of notice of Rule on behalf of the

respondent Nos.1 & 2.

An important question of law has been raised in this petition to the effect that whether while fixing the amount of premium under section 43 of The Bombay Tenancy and Agricultural Lands Act,1948 for conversion of new and restricted tenure land into an old tenure land, an opportunity of being heard ought to be provided to the applicant or not ?

Section 43(1) of The Bombay Tenancy and Agricultural Lands Act,1948 (hereinafter referred to as “the Act,1948), reads as under :-

> *“43.(1) No land or any interest therein purchased by a tenant under section 17B, 32, 32F, 32-I, 32-O, [32U, 43-1D or 88E] or sold to any person under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector.”*

2. This petition has been preferred against the order dated 18th November,2005 passed by the Collector, Kutch (Annexure “D” to the memo of the petition), whereby the petitioner has been ordered to deposit Rs. 23,16,456/- for allowing the land bearing Survey no. 910/22 of village Varsamedi, Taluka Anjar for conversion into old tenure land.

3. Learned advocate Shri A.J.Patel, for the petitioner, mainly submitted that the impugned order dated 18th November,2005 passed by the Collector, Kutch, is violative of principles of natural justice. The amount of premium directed to be paid under section 43 of The Bombay Tenancy and Agricultural Lands Act, 1948. The impugned order is not a speaking order at all. What is running in the mind of Collector,Kutch is not capable of being read by the petitioner. The figures have come in the mind of the Collector, Kutch from heaven or sky. There ought to be some basis and ought to be some calculation for arriving at a prices referred to in the impugned order, whereby the petitioner is directed to make payment of 80% of Rs.28,95,570/- i.e. Rs.23,16,456/- arbitrarily. This figure has been fixed without any basis and violative of Article 14 of the Constitution of India. Arbitrariness and equality are sworn enemies of each

other. Where arbitrariness is present, equality is absent and, hence, the impugned order deserves to be quashed and set aside.

4. Learned advocate Shri A.J.Patel for the petitioner, has submitted that because of highly unequal bargaining power with the State, the petitioner has deposited Rs.23,16,456/- under protest with the respondent authority. Nonetheless, petitioner submits that this amount is excessively exorbitant. The relevant factors like price of land in vicinity of Revenue Survey No.910/22 paiki Village: Varsamedi, Tal.Anjar, District-Kutch, has not been appreciated by the Collector, Kutch. Had sufficient opportunity of being heard been given to the petitioner, it would have been brought to the notice of the Collector, Kutch that the figure arrived at by the Collector is exorbitant in nature. He has also relied upon several decision of the Hon'ble Apex Court as well as of this Court which are referred to hereinunder:

(i) 2000(3) GCD 1878 (Gujarat)

(ii) AIR 2002 Gujarat 193

(iii) 1976 GLR 525

In view of the aforesaid judgments, learned advocate for the petitioner submitted that adequate opportunity of

being heard ought to have been given to the petitioner before passing the impugned order by the Collector, Kutch and, therefore, impugned order deserves to be quashed as it is violative of principles of natural justice.

5. I have heard the learned Assistant Government Pleader Mr.Siraj Gori on behalf of the respondent nos.1 & 2, who has submitted that the decision arrived at by the Collector,Kutch dated 18th November,2005 is not so baseless which deserves to be quashed and set aside. On the contrary, the State Level Land Valuation Committee has arrived at the market value, which is an expert body, on which the Collector has placed the reliance and, therefore, it cannot be said that there is no basis for the Collector for passing the impugned order. The valuation arrived at for the property in question is by the expert body i.e. State Level Land Valuation Committee. The Collector, Kutch has merely accepted the said price, fixed by the State Level Land Valuation Committee and, therefore, petition may not be entertained by this Court in exercise of the extra ordinary jurisdiction conferred under Constitution of India.

6. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the

case, in my opinion, the order dated 18th November,2005 passed by the Collector, Kutch (Annexure "D" to the memo of petition) in so far as it relates to the amount of premium, to be paid by the petitioner is concerned, deserves to be quashed and set aside mainly for the following facts and reasons :-

(i) That the impugned order is passed without affording any opportunity of being heard to the petitioner. In view of judgment delivered by this Court, it is held by this Court in the case of **Harijan Vithalbhai Madhavbhai V/s. Krishnamurthy, The Collector, Baroda & Anr.** reported in **1976 GLR 525,** especially in para 7, as under**:-**

> *"7. .... In the instant case, the price of the land in question was fixed without the knowledge of the petitioner. He did not have any opportunity to express his views before the Collector and to tell him what in his opinion would be the just and fair price. Since the petitioner in the instant case did not have such an opportunity it is difficult to say that the price of Rs.4500/- fixed by the Collector for the land in question is a just and fair price. It is, therefore, necessary to direct the Collector to fix it again after ascertaining the views of the petitioner and after permitting him to submit to him whatever he wants to submit on that aspect of the question."*
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> *(Emphasis supplied)*

Thus, whenever the valuation of the land is fixed by the concerned authority, the opportunity of being heard ought to have been provided to the person, who is made liable to make the payment of the money. The fixation of market value, of any land, is a complex phenomina. Always the applicant should be heard so that he will have an opportunity to provide latest value of the lands situated in the near vicinity for arriving at correct market price of land in question. This bare minimum requirement, of principles of natural justice has not complied with before passing the impugned order dated 18th November,2005.

(ii) The document upon which the Collector, Kutchh, has placed reliance, in the impugned order has not been supplied to the petitioner. The valuation arrived at by the committee has been shown as the main base, but this document has been kept so secret, by the Collector that it has not been supplied. This tantamounts to violation of principles of natural justice. Nor even this report is annexed with the impugned order. Nobody knows even today, what is the report of the so called, committee, on the basis of which the Collector has passed the impugned order.

(iii) Several figures, are referred, in the impugned order, dated 18th November,2005. The committee has fixed the market price at Rs 90 per sq. mtrs. And made the petitioner liable to pay Rs.28,95,570/-. This figures of price cannot be arrived at by Collector, Kutch without any basis. The figure of price and premium cannot come in the mind of Collector, Kutch from heaven or sky. There ought to be some calculation, some base for arriving at market value based upon legal principles of valuation. Such base ought to be supplied to the applicant. No base is reflected in the impugned order, hence, the order is a non-speaking order.

(iv) The application dated 25.8.2004 was preferred by the petitioner under section 43 of the Bombay Tenancy and Agricultural Lands Act, whereas the impugned order has been passed after lapses of one year and two months. The market price ought to have been arrived at as on date of the application made by the petition. It has been held in the case of **Jayantibhai Naranbhai Amin & Ors. V/s. State of Gujarat & Ors.** reported in **AIR 2002 Gujarat 193, especially** part of para 6 thereof, reads as under:-

"6. .....

> *..... ..... Therefore, determining the market price of such land prevailing at the time of passing of the order, apparently an injustice to the petitioners. It is also necessary to note that while fixing the market price, the respondent-Collector has not given any opportunity of hearing to the petitioners, otherwise, the petitioners would have drawn the attention of the respondent-authority toward actual market price prevailing at the relevant time in respect of the land in question. However, from the record of this case, it seems that the respondent-Collector has fixed the market price universally without giving an opportunity of hearing to the petitioners. Therefore, according to my opinion, when the authority has consumed unreasonable time in considering the application submitted by the petitioners for regularising the land in question and fixing the market price and if the respondent-Collector passed the order after the period of five to ten years fixing the market price prevailing at the time of passing of order, can be said to be clear injustice to the petitioners and such orders can be said to have passed in arbitrary manner. If the orders regularizing the land in question had passed at the time of first application submitted by the petitioners, then, naturally the market price would have been fixed at the rate prevailling at the relevant time. ....”*
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> *(Emphasis supplied)*

Enough time has lapsed after the application and, therefore, if an opportunity would have been given to the petitioner, he would have brought to the notice of the Collector, Kutch the market price of the land in dispute at the relevant time and of land in the vicinity, would have avoided the payment of unreasonably excessive figure

of premium fixed by the impugned order. As this Court is remanding the matter to the Collector, Kutch, for afresh decision, there is no need to go into fine nicety of facts. Suffice it to say that for want of affording the opportunity of being heard to the petitioner, the order is arbitrary, illegal. It is also a non-speaking order and hence requires to be quashed and set aside.

7. As a cumulative effect of aforesaid facts, reasons and judicial pronouncements, I hereby quash and set aside the order passed by the Collector, Kutch dated 18th November,2005 (Annexure “D” to the memo of the petition), so far as the amount of premium is concerned. The Collector, Kutch is hereby directed to give an opportunity of being heard to the petitioner and decide afresh, the amount of premium to be paid by the petitioner, within a period of three months from the date of receipt of the writ from this Court, keeping in mind, observations made hereinabove and all the relevant documents presented by the petitioner at the time of hearing. Rule made absolute accordingly, with no order as to costs. Direct service permitted.

(D.N.PATEL,J)

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